IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.156 OF 1987

Musamat Begum Mehmooda Wd/o
Gulam Ali Mulji Patel ...Appellant
Vs.
Shri Badruddin s/o Mulji Patel & Ors. ...Respondents

Mr Y. M. Choudhari for the Appellant.
Mr Rajiv Patil for the Respondents.

CORAM : A. S. OKA, J.

DATE : MARCH 22, 2006.

JUDGMENT:

1. Heard the Advocates appearing for the parties. This First Appeal is preferred by the unsuccessful Plaintiff. The Appellant filed a suit for declaration and injunction. The case of the Appellant was that she was legally wedded wife of one Gulam Ali s/o Mulji Patel. According to her case she married with the said Gulam Ali on 24th august, 1969 at Karegaon in district Beed. According to her case she cohabited with her husband at premises bearing Room Nos.32 and 33 situated at Amirali Building, 3rd Floor, Sayeeda Marg, Dongri, Bombay 400 009. The said Gulam Ali died on 16th July, 1979. According to the case of the Appellant, the said Gulam Ali was the tenant in respect of the Room Nos.32 and 33 (hereinafter collectively referred to as the suit premises). A part of the said premises were being used for business

and remaining part was being used for residence. Deceased Gulam Ali was carrying on business of manufacturing and sale of popcorns and was holding a municipal licence for the said business. According to the case of the Appellant, in her capacity as widow of deceased Gulam Ali she is entitled to occupy the suit premises. The Respondent No.1 (Defendant No.1) is the brother of deceased Gulam Ali and the Respondent Nos.2 and 3 are the sisters of the deceased. The allegation made in the plaint by the appellant is that she was removed physically from the Room Nos.32 and 33 by the Respondents and therefore, she was required to lodge the complaint. The relief of declaration is prayed to the effect that the Appellant is the widow and legally wedded wife of deceased Gulam Ali and is entitled to the exclusive right, title and interest in respect of Room Nos.32 and 33 alongwith all its fixtures, furnitures, fittings and other articles. Declaration is also prayed that the Appellant being widow and legally wedded wife of deceased Gulam Ali she is entitled to the money in the bank accounts of the deceased.

2. The suit was contested by the Respondents(Defendants) by filing written statement. The Respondents denied that there was a marriage

between the Appellant and deceased Gulam Ali. The case of the Defendants is that the tenancy rights in respect of the Room Nos.32 and 33 vests in the Respondent No.1 and the said rooms were temporarily given to deceased Gulam Ali. According to the case of the Respondents, the Appellant had no relationship whatsoever with the deceased Gulam Ali. It is contented that the appellant was only a part-time domestic servant employed by the deceased Gulam Ali for cleaning utensils etc.

3. The Trial Court dismissed the suit by holding that the Appellant did not establish that she was legally wedded wife of deceased Gulam Ali.

4. The learned Advocate appearing for the Appellant submitted that the Appellant had produced a true copy of nikahnama evidencing her marriage with Gulam Ali in the year 1969. He submitted that the true copy of the nikahnama produced by the Appellant was duly proved by examining P.W.3 Kazi Hayatulla who is the nephew of the kazi in whose presence the alleged marriage was solemnised. He submitted that though the nikahnama was duly proved in evidence, the learned Trial Judge has recorded erroneous finding of fact. He submitted that apart from nikahnama there

was evidence on record to show that for a long time the Appellant was residing with deceased Gulam Ali in the suit premises as wife and husband and therefore, presumption regarding existence of marriage can be drawn.

5. Shri Patil, learned Advocate appearing for the Respondents has invited my attention to the notes of evidence and submitted that the case made out by the Applicant regarding marriage with deceased Gulam Ali was patently false. He submitted that evidence on record shows that the Applicant was never staying with the deceased Gulam Ali in the premises in question. He, therefore, submitted that no interference was required.

6. I have considered the submissions made by the Advocates appearing for the parties. The Appellant examined herself. She merely stated that her marriage with deceased Gulam Ali was performed in the year 1969 in the month of August. She stated that she was not aware about the exact date of marriage. She produced a copy of the alleged nikahnama and stated that a kazi had given her the said copy. She stated that she was not aware about the name of the kazi. The copy of the nikahnama was not exhibited at that time by the

learned Judge as the original was not produced and was not proved. According to the deposition of the Appellant her father and her maternal uncle were present at the time of marriage which took place at Karegaon in district Beed. According to her case, at the instance of her husband the marriage was arranged at Karegaon in district Beed. According to her case thereafter she stayed alongwith her husband in the suit premises. At that time Khairunissa, the first wife of Gulam Ali was also residing in the suit premise who died about six years prior to the death of deceased Gulam Ali. She stated that after demise of her husband she continued to stay in the suit premises. She stated that the Respondent Nos.1 to 3 are residing in different premises and they never stayed in the suit premises.

7. The Appellant was cross-examined by the Advocate appearing for the Respondent. The Appellant admitted that she was initially serving with deceased Gulam Ali and while in service she fell in love with Gulam Ali and they got married. She admitted that she had no separate ration card at the address of the suit premises and in the ration card of deceased Gulam Ali her name was not entered. She stated that her name continued to be in the ration card of her parents even

after the marriage. She stated that though she received certain letters from her husband Gulam Ali she was unable to produce the same. Though she tried to say that her name appears in the voters list at the address of the suit premises, she admitted that she has not voted in any election. She did not produce a true copy of the relevant voter's list.

8. The Appellant examined one Shaikhbaba Bandu Patel as P.W.2. He stated that the Appellant was married to Gulam Ali and marriage took place at Karegaon in the year 1969. However, he was unable to tell the date and month of the marriage. According to him he was present at the time of marriage as he is the maternal uncle of the Appellant. It is pertinent to note that in the examination-in-chief of the Appellant she has described name of her maternal uncle as 'babamiya'. The said witness stated that he signed the register of Kazi as witness for the marriage. He stated that one Ahmed Gabru was the other witness who was present. It is pertinent to note that the Appellant has not disclosed the name of Ahmed Gabru in her examination-in-chief. The Appellant examined Kazi Hayatulla as P.W.3. The said witness claims to be a nephew of Kazi Mohomed Inayatullah. He identified the handwriting of his uncle Kazi Inayatullah on the copy

of the nikahnama. He stated that the copy of the nikahnama has been prepared from the original by his uncle and he has signed the same as true copy. He stated that he was not aware about the location of nikahnama register containing entry of the nikahnama after death of his uncle. He stated that as the copy appears to be in the handwriting of his uncle, he was telling that it was copy of the original. In the cross-examination he admitted that Kazi Inayatullah has left behind three sons and he was aware about the name of the eldest son. In the cross-examination he admitted that he was not aware about the contents of the documents marked as ‘X’ i.e. the nikahnama. In the cross-examination he was shown a copy of nikahnama issued by the Shabiruddin, son of his uncle Inayatullah. He admitted that it was signed by the said Shabiruddin. However, in the next sentence he stated that copy was not signed by the Shabiruddin and he was not aware as to who has signed it.

9. The Appellant examined P.W.4 Shaikh Karim Jamal. He stated that deceased Gulam Ali introduced the Appellant to him as his wife. In the cross-examination he stated that first wife of deceased Gulam Ali was not staying with him. He admitted that he never stayed at the place of the

deceased during night time. He was an employee of deceased Gulam Ali. He stated that he has executed an affidavit on 09th December, 1980 in which he has stated that the Appellant was working in the factory of Gulam Ali. He admitted that he was the brother-in-law of the Appellant.

10. On behalf of the Respondents the Defendant No.1 Baruddin Mulji Patel stepped into witness-box and stated that deceased Gulam Ali had married to Khairunissa in the year 1953 who was staying with her husband in the suit premises. He stated that said Khairunissa died in the year 1971. He denied that the Appellant was the second wife of deceased Gulam Ali. In the cross-examination the Respondent No.1 denied the relevant suggestions given by him by the Advocate for the Appellant. The Defendants examined the witness by name Shaikh Rasool Ahmed Shamsul Haq. He stated that he was staying in the same building in which deceased Gulam Ali was staying. The witness was having ironing shop near the staircase in the said building. He stated that deceased Gulam Ali used to give his clothes for ironing and the Appellant used to come to Gulam Ali’s place as servant. He stated that the Appellant used to work as maid-servant at the place of Gulam Ali and she never stayed at the house

of Gulam Ali during nights.

11. The Appellant has produced only a copy of nikahnama. No efforts were made by the Appellant to issue witness summons to the son of Kazi Inayatullah for production of the alleged nikahnama register. P.W. 3 Kazi Inayatullah has not seen the original of the nikahnama. He has also admittedly not seen the nikahnama register. When the P.W.3 Kazi Hayatulla disclosed in his evidence that a son of Kazi Inayatullah was alive, an effort could have been made by the Appellant to get witness summons issued to the son of Kazi for production of the original nikahnama register.

12. P.W.3 Kazi Hayatulla stated that according to him copy of nikahnama marked ‘X’ for identification was a true copy of the original nikahnama as according to him it was in the handwriting of his uncle. He has not stated that he has seen the original nikahnama. Even assuming that the Appellant was entitled to lead secondary evidence of the nikahnama in the form of a copy thereof, still the copy is not proved in evidence to be a true copy of the alleged original. P.W.3 Kazi Hayatulla has not stated that he has seen the original nikahnama.

13. The Appellant could not state in examination-in-chief the exact date of her marriage. Her maternal uncle who was examined as P.W.2 Shaikhbaba Patel stated that he was not able to state the date and month of the alleged marriage. P.W.2 Shaikhbaba was unable to tell the name of the kazi who performed the marriage. However, he stated that said Kazi was dead and his nephew was working as kazi. Hence, the Appellant failed to prove the nikahnama and consequently she failed to establish her marriage with deceased Gulam Ali.

14. The Appellant admitted that her name was never entered in the ration card of the deceased at the address of the suit premises. She stated that her name continued to be in the ration card of her parents. Though she claimed that her name was included in the voters list on the address of the suit premises, the voters list is not produced. She admitted that she never voted in any election. Though she stated that she had received letters from her deceased husband she was unable to produce a single letter. D.W. 2 Shaikh Rasool Ahmed who was in ironing business on the ground floor of the building in which deceased Gulam Ali was residing stated that

the Appellant was servant who used to work with the deceased during day time and she was never staying in the house during the night. Thus, in this case, the Appellant has even failed to prove that she was staying with the deceased in the suit premises.

15. If this is the quality of the evidence led by the Appellant, no fault can be found in the findings recorded by the Trial Court. The very foundation of the case of the Appellant was her alleged marriage with deceased Gulam Ali. She failed to establish the factum of marriage.

16. There is no merit in the Appeal and the same is dismissed. The Appellant is directed to pay costs of this Appeal to the Respondents.

JUDGE